

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1482

Introduced by Assembly Member Richman
(Coauthors: Assembly Members Bates, Cogdill, Maddox, and
Wyland)

February 21, 2003

An act to amend Section 5307.1 of, *and to repeal Section 5307.21 of*, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1482, as amended, Richman. Workers' compensation: medical services: fee schedule.

Existing law requires the Administrative Director of the Division of Workers' Compensation to adopt and revise, no less frequently than biennially, an official medical fee schedule that establishes reasonable maximum fees paid for medical services through the workers' compensation system.

This bill would require all medical services provided to a worker from the date of injury to be subject to the official medical fee schedule, regardless of the date the injury is accepted as, or determined to be, compensable. The bill would require the administrative director to include in the schedule, on or before January 1, 2005, services for outpatient surgery facilities and emergency room facilities, *as well as pharmacy services and products, ambulance services, and home health care services*. The bill would impose certain requirements on the administrative director when revising the schedule.

Existing law requires the administrative director to consult with statewide professional organizations representing affected providers on the update of the fee schedule.

This bill would require the administrative director to consult with the Industrial Medical Council prior to the adoption of any update of the medical fee schedule. It would also require the council to hold a public hearing no less than 45 days before the date of the proposed adoption of the update to give interested parties the opportunity for comment.

Existing law authorizes a medical provider or a licensed health care facility to be paid fees by an employer or carrier that are in excess of those set forth on the official medical fee schedule if certain conditions are met.

This bill would prohibit the total payment to the provider of medical services from exceeding the maximum reasonable fees listed in the official medical fee schedule, except as provided. *It would also authorize a medical provider or a licensed health care facility to be paid a fee by an employer or carrier in the event that a service is not set forth on the official medical fee schedule, if the fee is reasonable, as specified.*

Existing law provides that the administrative director shall have the sole authority to develop an outpatient surgery facility fee schedule for services not performed under contract, provided that the schedule meets specified requirements.

This bill would delete this provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5307.1 of the Labor Code is amended
2 to read:
3 5307.1. (a) (1) The administrative director, after public
4 hearings, shall adopt and revise, no less frequently than biennially,
5 an official medical fee schedule that shall establish reasonable
6 maximum fees paid for medical services provided pursuant to this
7 division. All medical services provided to a worker from the date
8 of injury shall be subject to the official medical fee schedule,
9 regardless of the date the injury is accepted as, or determined to be,
10 compensable. The official medical fee schedule shall include all
11 of the following:



1 (A) Services for health care facilities licensed pursuant to
2 Chapter 2 (commencing with Section 1250) of Division 2 of the
3 Health and Safety Code, and drugs and pharmacy services. The fee
4 schedule for health care facilities shall take into consideration cost
5 and service differentials for various types of facilities.

6 (B) On or before January 1, 2005, services for outpatient
7 surgery facilities and emergency room facilities, *as well as*
8 *pharmacy services and products, ambulance services, and home*
9 *health care services.*

10 (C) Services provided by physical therapists, physician
11 assistants, and nurse practitioners. Nothing in this subparagraph
12 shall affect the ability of physicians to continue to be reimbursed
13 for their services in accordance with the official medical fee
14 schedule adopted pursuant to this paragraph for the provision of
15 services within their scope of practice.

16 (2) Where applicable, when revising the official medical fee
17 schedule as required by paragraph (1) or to include additional
18 services as required by this section, the administrative director
19 ~~shall use as a starting point, the Medicare resource-based relative~~
20 ~~value scale (RBRVS) multiplied by 1.25 and may establish~~
21 ~~additional percentage increases to the RBRVS baseline fee~~
22 ~~amount~~ *shall base the fee on the Medicare resource-based relative*
23 *value scale (RBRVS) multiplied by 1.15. The administrative*
24 *director shall review the fee schedule on an annual basis and may*
25 *modify the multiplier* if required to meet one or more specified
26 access-to-physician standards, as developed by the administrative
27 director.

28 (3) The administrative director shall consult with statewide
29 professional organizations representing affected providers on the
30 update of the official medical fee schedule. Prior to the adoption
31 of any update of the official medical fee schedule, the
32 administrative director shall consult with the Industrial Medical
33 Council. The council shall hold a public hearing no less than 45
34 days before the date of the proposed adoption of the update to give
35 interested parties the opportunity for comment. The council shall
36 make recommendations regarding the proposed update, and the
37 administrative director shall include those recommendations in the
38 rulemaking file.

(b) (1) The total payment to the provider of medical services shall not exceed the maximum reasonable fee listed in the official medical fee schedule.

(2) Notwithstanding paragraph (1), nothing in this section shall prohibit a medical provider or a licensed health care facility from being paid fees by an employer or carrier that are in excess of those set forth on the official medical fee schedule, if the fee is both of the following:

(A) Reasonable, *as specified in paragraph (4)*.

(B) Accompanied by itemization and justified by an explanation of extraordinary circumstances related to the unusual nature of the medical services rendered.

In no event shall a physician charge in excess of his or her usual fee.

(3) *In the event a service is not set forth on the official medical fee schedule, nothing in this section shall prohibit a medical provider or licensed health care facility from being paid a fee by an employer or carrier if the fee is reasonable, as specified in paragraph (4).*

(4) *In determining the reasonableness of a fee, for purposes of paragraphs (2) and (3), the appeals board may consider a number of factors, including, but not limited to, the following:*

(A) *The usual fee of the medical provider or licensed health care facility.*

(B) *The usual fee of other medical providers or licensed health care facilities located in the same geographical area.*

(C) *The usual fee accepted by the medical provider or licensed health care facility as opposed to the usual fee charged.*

(D) *The amount accepted by the medical provider or licensed health care facility from Medicare for the same service.*

(E) *Any other relevant factors.*

(c) In the event of a dispute between the physician and the employer or carrier concerning the medical fees charged, the physician may be allowed a reasonable fee for testimony, if a physician testifies pursuant to the employer's or carrier's subpoena, and the workers' compensation administrative law judge determines that the medical fee charged was reasonable.

(d) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses ~~as defined by~~, *as defined in Section 4620*.

1 *SEC. 3. Section 5307.21 of the Labor Code, as added by*
2 *Chapter 6 of the Statutes of 2002, is repealed.*

3 ~~5307.21. (a) The administrative director shall have the sole~~
4 ~~authority to develop an outpatient surgery facility fee schedule for~~
5 ~~services not performed under contract, provided that the schedule~~
6 ~~meets all of the following requirements:~~

7 ~~(1) The schedule shall include all facility charges for outpatient~~
8 ~~surgeries performed in any facility authorized by law to perform~~
9 ~~the surgeries. The schedule may not include the fee of any~~
10 ~~physician and surgeon providing services in connection with the~~
11 ~~surgery.~~

12 ~~(2) The schedule shall promote payment predictability,~~
13 ~~minimize administrative costs, and ensure access to outpatient~~
14 ~~surgery services by insured workers.~~

15 ~~(3) The schedule shall be sufficient to cover the costs of each~~
16 ~~surgical procedure, as well as access to quality care.~~

17 ~~(4) The schedule shall include specific provisions for review~~
18 ~~and revision of related fees no less frequently than biennially.~~

19 ~~(5) The schedule shall be adopted after public hearings~~
20 ~~pursuant to Section 5307.3 and shall be included within the official~~
21 ~~medical fee schedule.~~

22 ~~(b) The process used by the administrative director to develop~~
23 ~~an outpatient surgery fee schedule shall contain the following~~
24 ~~elements:~~

25 ~~(1) A formal analysis of one year of published data collected~~
26 ~~pursuant to Section 128737 of the Health and Safety Code, with~~
27 ~~the assistance of an independent consultant with demonstrated~~
28 ~~expertise in outpatient surgery service.~~

29 ~~(2) Any published data collected from providers of outpatient~~
30 ~~surgery services.~~

31 ~~(3) Payment data including, but not limited to, type of payer~~
32 ~~and amount charged.~~

33 ~~(4) Cost data including, but not limited to, actual expenses for~~
34 ~~labor, supplies, equipment, implants, anesthesia, overhead, and~~
35 ~~administration.~~

36 ~~(5) Outcome data including, but not limited to, expected level~~
37 ~~of rehabilitation, expected coverage timeframe, and incidence of~~
38 ~~infection.~~

39 ~~(6) Access data including, but not limited to, date of injury, date~~
40 ~~of surgery recommendation, and data of procedure.~~

~~(7) Other data that is mutually agreed to by the Office of Statewide Health Planning and Development and the administrative director. The administrative director shall consult with the Office of Statewide Health Planning and Development to ensure that the data collected is comprehensive and relevant to the development of a fee schedule.~~

~~(c) The outpatient surgery facility fee schedule shall reflect input from workers' compensation insurance carriers, businesses, organized labor, providers of outpatient surgical services, and patients receiving outpatient surgical services.~~

SEC. 4. Section 5307.21 of the Labor Code, as added by Chapter 866 of the Statutes of 2002, is repealed.

~~5307.21. (a) The administrative director shall have the sole authority to develop an outpatient surgery facility fee schedule for services not performed under contract, provided that the schedule meets all of the following requirements:~~

~~(1) The schedule shall include all facility charges for outpatient surgeries performed in any facility authorized by law to perform the surgeries. The schedule may not include the fee of any physician and surgeon providing services in connection with the surgery.~~

~~(2) The schedule shall promote payment predictability, minimize administrative costs, and ensure access to outpatient surgery services by injured workers.~~

~~(3) The schedule shall be sufficient to cover the costs of each surgical procedure, as well as access to quality care.~~

~~(4) The schedule shall include specific provisions for review and revision of related fees no less frequently than biennially.~~

~~(5) The schedule shall be adopted after public hearings pursuant to Section 5307.3 and shall be included within the official medical fee schedule.~~

~~(b) The process used by the administrative director to develop an outpatient surgery fee schedule shall contain the following elements:~~

~~(1) A formal analysis of one year of published data collected pursuant to Section 128737 of the Health and Safety Code, with the assistance of an independent consultant with demonstrated expertise in outpatient surgery service.~~

~~(2) Any published data collected from providers of outpatient surgery services.~~

1 ~~(3) Payment data including, but not limited to, type of payer~~
2 ~~and amount charged.~~

3 ~~(4) Cost data including, but not limited to, actual expenses for~~
4 ~~labor, supplies, equipment, implants, anesthesia, overhead, and~~
5 ~~administration.~~

6 ~~(5) Outcome data including, but not limited to, expected level~~
7 ~~of rehabilitation, expected coverage timeframe, and incidence of~~
8 ~~infection.~~

9 ~~(6) Access data including, but not limited to, date of injury, date~~
10 ~~of surgery recommendation, and date of procedure.~~

11 ~~(7) Other data that is mutually agreed to by the Office of~~
12 ~~Statewide Health Planning and Development and the~~
13 ~~administrative director. The administrative director shall consult~~
14 ~~with the Office of Statewide Health Planning and Development to~~
15 ~~ensure that the data collected is comprehensive and relevant to the~~
16 ~~development of a fee schedule.~~

17 ~~(e) The outpatient surgery facility fee schedule shall reflect~~
18 ~~input from workers' compensation insurance carriers, businesses,~~
19 ~~organized labor, providers of outpatient surgical services, and~~
20 ~~patients receiving outpatient surgical services.~~

21 ~~(d) At least 90 days prior to commencing the public hearings~~
22 ~~related to an outpatient surgery fee schedule as prescribed by~~
23 ~~Section 5307.3, the administrative director shall provide the~~
24 ~~Assembly Committee on Insurance and the Senate Committee on~~
25 ~~Labor and Industrial Relations a comprehensive report on the data~~
26 ~~analysis required by this section and the administrative director's~~
27 ~~recommendations for an outpatient surgery fee schedule.~~